

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ULILUS DUBARD,

Plaintiff,

CIVIL ACTION NO. 10-CV-12740

vs.

DISTRICT JUDGE MARK A. GOLDSMITH

ERIC BUCKBERRY, et al.,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

/

**ORDER GRANTING IN PART DEFENDANT BUCKBERRY'S MOTION TO COMPEL
DISCOVERY (DOCKET NO. 12)**

Plaintiff, a Michigan state prisoner, filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges *inter alia* that police officer Eric Buckberry used excessive force during a high-speed chase and acted with deliberate indifference to Plaintiff's medical needs. Presently before the Court is the Motion to Compel Discovery filed by Defendant Buckberry on March 15, 2011. (Docket no. 12). Plaintiff has not responded and the time for responding has now expired. All pretrial matters have been referred to the undersigned for decision. (Docket no. 8). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(f). Defendant's motion is now ready for ruling.

Defendant Buckberry shows that he served his First Set of Interrogatories and First Requests for Production of Documents to Plaintiff on October 28, 2010, consisting of twenty-three interrogatories and four document requests. (Docket no. 12, ex. A). Defendant Buckberry contends that Plaintiff failed to serve written responses or objections to the discovery requests and now moves for an order compelling full and complete responses to his First Set of Interrogatories and First

Requests for Production of Documents. Defendant also moves for costs and attorney's fees incurred in filing this motion.

Defendant contends that Plaintiff failed to respond within the allotted time period and Plaintiff has not shown otherwise. Plaintiff was required to respond in writing to the discovery requests within 30 days after service. Fed.R.Civ.P. 33(b)(2), 34(b)(2)(A). The fact that Plaintiff is proceeding pro se and in forma pauperis does not excuse him from this responsibility. Because Plaintiff also did not respond to Defendant Buckberry's motion, the motion is unopposed. By not filing any proper objections during the response period, Plaintiff has waived any objections to the discovery. The Court will therefore grant Defendant Buckberry's Motion to Compel.

Federal Rule of Civil Procedure 37(d) authorizes the Court to order sanctions if a party fails to answer interrogatories or respond to a request for production of documents. Rule 37(a)(5) makes an award of costs and attorney's fees mandatory when a party successfully challenges their opponent's failure to comply with discovery requests. Costs and attorney's fees should not be awarded if the moving party filed the motion before attempting in good faith to obtain the discovery without court action, the opposing party was substantially justified in withholding discovery, or an award of expenses would be unjust. Fed.R.Civ.P. 37(a)(5)(A).

Defendant Buckberry claims that he sought concurrence in the relief requested before filing this motion, but that concurrence was not obtained. He does not, however, describe what efforts he took to obtain the discovery responses from Plaintiff. Therefore, it is not known whether Plaintiff refused to respond to the discovery requests or whether he merely overlooked his obligation to do so. In light of Plaintiff's incarceration, his pro se and in forma pauperis status, and the fact that Defendant Buckberry has not described his efforts to obtain the discovery responses from Plaintiff,

the Court finds that an award of costs and attorney's fees is unjust.

IT IS THEREFORE ORDERED that Defendant Buckberry's Motion to Compel (docket no. 12) is **GRANTED IN PART**. Plaintiff must on or before May 11, 2011 submit to Defendant Buckberry's counsel full and complete responses, without objection, to Defendant Buckberry's First Set of Interrogatories and First Requests for Production of Documents served on October 28, 2010. Defendant Buckberry's request for costs and attorney's fees is denied. **Failure to comply with this order may result in dismissal of Plaintiff's claims against Defendant Buckberry.**

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: 4/21/11

s/ Mona K. Majzoub

MONA K. MAJZOUB

UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Ulilus Dubard and Counsel of Record on this date.

Dated: 4/21/11

s/ Lisa C. Bartlett

Case Manager